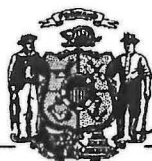


Public Service Commission of Wisconsin  
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State Senator  
**Chuck Chvala**  
SENATE MAJORITY LEADER

Mark - Here's the  
draft I voice -  
mailed about.  
Thanks!

A stylized handwritten signature in black ink, likely belonging to Chuck Chvala.



Preliminary Draft

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April 1, 1999

**I. ASSET-CAP MODIFICATION/  
TRANSMISSION COMPANY (TransCo)** ✓

Section 196.795(5)(pm) 1.a. of the statutes is created to read:

Sec. 196.795(5)(pm)1.a.

"Energy and telecommunications assets" means the assets of a nonutility affiliate that are used for the production, transmission, delivery or furnishing of heat, light, power or natural gas or that are used for the provision of telecommunications service, as defined in sec. 196.01(9m), Stats.

Sec. 196.795(5)(pm)4. of the statutes is created to read:

4. a. If each of the public utility affiliates of all the public utility holding companies authorized by the commission under sec. 196.795(2) (*i.e.*, *Wisconsin Energy, Alliant, WPS Resources*) divest all of their transmission facilities as defined by sec. 196.485(1)(h) to the same transmission company (TC) that meets the requirements set forth below in sec. 6, the energy and telecommunications assets of a nonutility affiliate shall not be included in the sum of the assets of a public utility affiliate under par.(p)1.a., b. or c. and shall not be included in a nonutility affiliate's total assets under par.(p)2.a.

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b. The effective date of this section shall be the date the TC, after divestiture by the persons described above in section 4(a), commences operation, as set forth in section 5(s) below.

5. The TC shall meet the following requirements:

- a. it shall be a public utility subject to the jurisdiction of the public service commission and the federal energy regulatory commission;
- b. it shall be a single-purpose company, and that purpose shall be to plan, construct, operate, maintain and expand the transmission facilities which it owns to meet the needs of all users dependent upon it, consistent with subsection (c);
- c. it shall transfer its transmission facilities to an independent system operator which has been approved by the federal regulatory energy commission prior to 12/31/98 (*i.e., the MISO*), and shall remain a member of such ISO or any successor regional transmission organization approved by the appropriate regulatory agencies at least through the transition period set forth in the agreement which establishes the ISO (*6 years*);
- d. prior to such transfer, the transmission utilities in the transmission area as defined by sec. 196.485(1)(g) (*i.e., WEPCO, WPS, Alliant, MGE*) shall individually join the MISO;
- e. it shall not own electric generation facilities or sell electric capacity or energy in the state or the region; nor shall it directly or



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indirectly participate in the relevant wholesale or retail markets for the purchase and sale of electricity in the state or the region;

- f. it shall have the exclusive duty and responsibility, subject to the approval of the commission, to construct and own any additional high-voltage transmission facilities in the transmission area (i.e., *EWU*);
- g. the transmission utilities in the transmission area and the TC shall elect initially to be a single zone for purposes of the MISO tariff, and shall thereafter be part of the same zone;
- h. any electric utility as defined in sec. 196.491(1)(d) (e.g., *MGE, DPC, MPL, NSP*) shall have the option to transfer its transmission facilities to the TC on the same terms and conditions as public utility affiliates of public utility holding companies; such option shall be exercised within \_\_\_\_ months of the formation of the TC;
- i. transmission-dependent public utilities and electric cooperatives in the state (e.g., *WPPI, other municipal utilities, non-DPC coops*) shall have the option to purchase an equity interest in the TC on reasonable terms and conditions and in an amount equal to their share of firm electric usage in the prior year (1998);
- j. the transmission facilities transferred to the TC shall be valued at net book cost at the time of transfer;
- k. if a public utility affiliate may not transfer ownership of its transmission facilities to an TC due to merger-related accounting requirements, it shall, for the period of time during which such

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requirements are in effect, transfer its transmission facilities by means of a net lease which shall be the financial equivalent of a transfer of ownership, provided, however, that during such time it shall not receive voting shares in the TC;

1. a transmission utility that transfers its transmission facilities to the TC shall receive securities in the form of common stock with voting rights, preferred stock without voting rights, and bonds, such that the return of and on capital for such utility is equivalent to the return of and on capital which that utility currently receives, as approved by the public service commission and the federal energy regulatory commission; provided, however, that no transmission utility shall receive such common stock with voting rights to an extent that will allow it to control the TC, and in such case preferred stock without voting rights shall be substituted for common stock;
- m. the bylaws of the TC shall require that each transmission utility which transfers ownership of its facilities to the TC has the right to appoint one director to the board of directors of the TC, and that the board of directors shall appoint four additional directors to represent interests of wholesale transmission users, retail customers, the environment and the public interest;
- n. the transmission utilities who transfer ownership of their facilities to the TC shall initially capitalize the TC in a manner which the public service commission determines shall permit the TC to

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finance in a prudent manner at least \$400,000,000 of transmission improvements within the state during the next five years; such initial capitalization shall be subject to reasonable limits on each transmission utility's obligation to contribute capital; transmission utilities also shall contribute start-up and working capital to the TC as necessary, provided that the TC makes reasonable provision to repay such costs to such utilities; the TC also shall be authorized to issue new common stock and bonds as necessary, subject to the approval of the public service commission;

- o. the TC shall hire a sufficient number of non-supervisory employees to operate and maintain its transmission facilities by initially making offers of employment to the non-supervisory workforce of the transmission utilities, at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer of ownership of such facilities, and such wage rates and substantially equivalent fringe benefits and terms and conditions of employment shall continue for at least 30 months from the time of such transfer of ownership unless the parties mutually agree to different terms and conditions of employment within that 30-month period; the transmission utilities shall offer a transition plan to those employees who are not offered jobs by the TC because it has a need for fewer workers;

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- p. the TC shall have the authority, subject to the approval of the appropriate regulatory agencies, to enter into contracts with the transmission utilities which transfer its facilities to the TC for the purpose of providing reasonable and cost-effective construction and maintenance services to the TC;
- q. the TC shall have the authority to expand through the voluntary purchase or acquisition of additional transmission facilities, subject to the approval of the appropriate regulatory agencies;
- r. the TC shall assume any obligations of transmission utilities who transfer ownership to the TC which consist of agreements to provide transmission service over their facilities, or credits for the use of certain transmission facilities of transmission users (*i.e., munis and coops who currently receive facilities credits*);
- s. the TC shall file an application for certification as a public utility and a plan of operation with the PSC and the FERC by 1/1/2000, with service commencing no later than 6/30/2000; the TC shall be the transmission service provider in the transmission area until the MISO is operational;
- t. the TC may not sell, transfer, or merge its assets with another person, unless such assets are sold, transferred, or merged on an integrated basis, and in a manner which insures that the transmission facilities in the transmission area (*i.e., EWU*) are planned, constructed, operated, maintained and controlled as a single transmission system.

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6. If a holding company or public-utility affiliate sells, transfers, assigns, or otherwise conveys the functions of a public-utility affiliate to any other person, including a non-utility affiliate, the contract or arrangement for transfer between the holding company or public-utility affiliate and such person shall require that the person comply with sec. 5(o) above (*i.e., offer of employment or transition plan*).

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**I. ASSET-CAP MODIFICATION/  
TRANSMISSION COMPANY (TransCo)/MISO**

Section 196.795(11)(b) *(relating to WICOR)* is amended to add:

4. a. The commission may not impose upon a holding company that owns, operates, manages or controls a natural gas public utility and that does not also own, operate, manage or control a public utility which is an electric utility terms, limitations or conditions under (b) that establish the sum of the holding company's non-utility affiliate assets at less than 25% of the sum of the holding company's utility affiliate assets. For the purpose of this subsection, any terms, limitations, or conditions on non-utility affiliate assets shall not apply to the ownership, operation, management or control of: (i) energy and telecommunications assets, as defined in sec. 196.795(5)(a)(pm)1.a., or (ii) manufacturing, distributing, or selling swimming pools or spas, products for pumping water or other fluids, processing or heating water, fluid-handling, filtration or related businesses.

Section 196.795(5)(pm) 1 of the statutes is created to read:

- (a) "Energy and telecommunications assets" means, subject to (b), the assets of a non-utility affiliate which are used for the production, generation, transmission, delivery, sale or furnishing of gas, oil, electric, or steam energy; energy management and demand-side management

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services, energy conservation, or energy efficiency; energy customer service, metering, or billing; the recovery or production of energy from waste materials, the processing of waste materials; or the provision of telecommunications service, as defined in sec. 196.01(9m), Stats.

- (b) If a non-utility affiliate by by-law or resolution limits its business to activities involving energy and telecommunications assets, and substantially all of its assets are energy and telecommunication assets, all of the assets of the non-utility affiliate shall be treated as energy and telecommunications assets.

Sec. 196.795(5)(pm)3 and 4 of the statutes are created to read:

- 3. The net-book value of transmission facilities contributed to a transmission company (TC) as provided in sections (4) and (5), as these facilities would be depreciated over the course of time if still owned by such affiliates, shall continue to be included in the sum of the assets of the public-utility affiliates.
- 4. If a public utility affiliate is required or permitted by a lawful final order of a regulatory agency or court to sell or divest generation facilities to a third party which is not an affiliate of the public utility affiliate, the net book value of such generation facilities, as these facilities would be depreciated over the course of time if still owned by such affiliate, shall continue to be included in the sum of the assets of the public-utility affiliates.

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Sec. 196.795(5)(pm)4. and 5. of the statutes are created to read:

4. a. If each of the public utility affiliates <sup>in a HCS</sup> ~~of a public utility holding~~ <sup>to which HC Grant - of HC in which has rec'd approval</sup> company authorized by the commission under sec. 196.795(2) (i.e., Wisconsin Energy, Alliant, or WPS Resources) transfers operational control of all of its transmission facilities in this state and in Iowa, Michigan, Minnesota and Illinois, and any other of its transmission facilities integrated therewith, to the same independent system operator which has been accepted for filing with conditions by the federal energy regulatory commission and <sup>now</sup> had members in the state prior to 12/31/98 (i.e., the MISO), and contributes, subject to its membership in the MISO, all of its currently owned transmission facilities, as defined by sec. 196.485(1)(h) in this state, and associated rights of way, easements, and land, subject to the rights of existing co-users, as provided in sec. 5, and commits to contribute, and to cause each entity into which it merges or consolidates, or to which it transfers substantially all of its assets to contribute, all subsequently acquired or otherwise owned transmission facilities, as defined by sec. 196.485(1)(h), in this state and associated rights of way, easements, and land, subject to the rights of existing co-users, as provided in sec. 5, to the same transmission company (TC) that meets the requirements set forth below in sec. 5, then the energy and telecommunications assets of the non-utility affiliates of such holding company shall not be included in the sum of the assets of



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the public utility affiliates under sec. 196.795(5)(p)1.a., b. or c. and shall not be included in the non-utility affiliates' total assets under sec. 196.795(5)(p)2.a.

- b. This section shall be effective for a public utility holding company on the first day following the date upon which all of its public utility affiliates have taken all of the following actions: (1) filed with the public service commission unconditional, irrevocable and binding legal commitments to contribute to the TC, by a date certain no later June 30, 2000, the transmission facilities and associated rights of way, easements and land, as set forth above in section 4(a), (2) petitioned the public service commission and the federal energy regulatory commission for approval to transfer its transmission facilities to the TC as provided in sec. 4(a), and agreed in such petitions not to withdraw its request in the event that the public service commission or the federal energy regulatory commission conditions the approval of such petitions on changes consistent with state or federal law, and (3) notified the public service commission in writing that it has joined the MISO, and committed not to withdraw as a member from the MISO prior to the date on which it contributes its transmission facilities to the TC and requested approval from the public service commission and the federal energy regulatory commission to transfer operational control to the MISO of its transmission facilities. Such unconditional, irrevocable and binding commitments shall be

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enforceable by specific performance in the circuit court of Dane County by any wholesale or retail customer of such public utility affiliate. A public utility affiliate also shall forfeit \$25,000 per day for each day after June 30, 2000 that contribution of its transmission facilities is delayed, provided that the TC is legally able to accept transfer.

- c. For the purposes of this Act, transfer of transmission facilities includes transfer of the deferred tax reserves associated with those facilities.

5. The TC shall meet the following requirements:

- a. it shall be a public utility subject to the jurisdiction of the public service commission except as provided below in section 5(t), and the federal energy regulatory commission;
- b. it shall be a single-purpose corporation under chapter 180 or a single-purpose limited-liability company under chapter 183, and that purpose shall be to plan, construct, operate, maintain and expand the transmission facilities which it owns to provide an adequate, reliable transmission system which meets the needs of all users dependent upon it and supports robust competition in energy markets without favoring any participant in such markets, consistent with subsection (c) and with secs. 196.485 and 196.494;
- c. it shall transfer operational control of its transmission facilities to the MISO, and shall remain a member of such ISO or any successor regional transmission organization approved by the

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appropriate regulatory agencies at least through the transition period set forth in the agreement which establishes the ISO (6 years);

d. it shall not own electric generation facilities or sell, market, or broker electric capacity or energy in the relevant wholesale or retail markets for the purchase and sale of electricity in the state or the region, provided, however, that nothing in this subsection shall prohibit the TC from procuring and reselling ancillary services from third parties, engaging in redispatch activities necessary to relieve constraints, or operating a control area, as required or authorized by the federal energy regulatory commission.

e. it shall have the exclusive duty and responsibility, subject to the approval of the commission, to construct and own any additional high-voltage transmission facilities in the transmission area (i.e., EWU), and in the other areas of the state where the transmission facilities of any electric utility which contributes transmission facilities to the TC are located;

f. it shall elect to be included in a single zone for purposes of the MISO tariff when it becomes effective, and shall thereafter be part of the same zone; provided, however, that if the transmission costs of any of the transmission utilities in the transmission area were 10% or more below the average transmission cost of the transmission utilities in the transmission area as a group immediately prior to transfer, the TC and the public utility

*uniform  
single price  
for transmission*

*FERC*

*Transition  
to  
single  
price*

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affiliates referred to above shall devise a phase-in plan for the new combined single zone for pricing network use by the utilities that have joined the MISO and by other transmission users, and shall seek approval from the MISO and the federal energy regulatory commission for such a zone. Such plan shall phase in an average-cost price for the zone in equal parts over five years, provided, however, that service shall be provided to all users on a single-zone basis during the phase-in period;

g. The transfer of land rights to the TC shall be as follows:

(1) A "land right" for purposes of this section means the right pursuant to which transmission facilities are located on real property and include, without limitation, ownership and fee, easements, permissions and/or licenses.

(2) Where a land right has been booked to transmission for ratemaking purposes and is not being jointly used for electric distribution or gas facilities by the public utility affiliate, the public utility affiliate shall convey or assign at book value all of its interest in the land right to the TC, subject to any rights of existing joint users of the land right for communications or other facilities and a right in the public utility affiliate to access in the future on a non-discriminatory basis. This provision also shall apply to land rights that have been acquired by a utility affiliate and are being held for future use for transmission and not held

*Single use to  
Transco  
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for joint-use. If the land right cannot be transferred or assigned to the TC, the public utility affiliate shall enter into a contract with the TC granting the TC substantially the same rights it would have had if transfer or assignment were possible for the same price (book value) for the life of the TC's transmission facilities and any replacements thereof.

- (3) Where a land right in use for transmission facilities being transferred to the TC also is being used, or is planned to be used, by the public utility affiliate for electric or gas distribution facilities, the public utility affiliate shall grant the TC by contract a right to place and maintain the TC's transmission facilities, and any modifications or replacements thereof, on such land right for the life of such facilities, including any replacements. The rights of the TC under the contract for the purpose of providing transmission service shall be paramount to the rights of any other users of the land rights for any purpose, which use must not interfere in any way with the TC's use, except that the right of the public utility affiliate to use the land rights for electric or gas distribution facilities shall be on a par with the rights of the TC for transmission purposes.
- (4) Any dispute concerning the sufficiency of the land right transferred or the valuation of the right shall be submitted to the public service commission for resolution, unless a

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federal agency has jurisdiction over the dispute. No such dispute shall delay commencement of operations of the TC. During any pending dispute, the TC shall be entitled to use the land right in question, and shall pay any disputed compensation into an escrow account.

- h. any electric utility as defined in sec. 196.491(1)(d) (e.g., MGE, DPC, MPL, NSP) shall have the option to transfer all of its integrated transmission facilities to the TC on the same terms and conditions as public utility affiliates of public utility holding companies; such option shall be exercised no later than one year after the date on which the first public-utility affiliate files the commitment to contribute its transmission facilities to the TC set forth in 4(a);

- i. ~~transmission-dependent public utilities and electric cooperatives in~~ the state (e.g., WPPI, other municipal utilities, non-DPC coops) may purchase equity interests in the TC at a price and on terms and conditions comparable to those for transmission utilities that have contributed their transmission facilities, that is, equivalent to net-book value, by contributing funds up to their pro-rata shares based upon firm electric usage in the state in the prior year (1999); such option shall be exercised no later than one year after the date on which the first public-utility affiliate files the commitment to contribute its transmission facilities to the TC set forth in 4(a);

- j. the transmission facilities transferred to the TC shall be valued at net book value at the time of transfer;

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*Alliant*  
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- k. if a public utility affiliate may not transfer ownership of its transmission facilities to the TC due to merger-related accounting requirements, it shall, only for the period of time during which such requirements are in effect, transfer its transmission facilities by means of a lease which complies with the requirements set forth in section (4) and in this section, provided that, as soon as such merger-related accounting requirements are no longer applicable, it shall be eligible to continue to exclude energy and telecommunications assets from its asset-cap formula only if it elects to transfer ownership of its transmission facilities to the TC as provided in section (4) and in this section, and provided further that during the term of any such lease the public-utility affiliate shall not receive voting interests in the TC;
- l. a transmission utility or other electric utility that contributes its transmission facilities to the TC under sec. 4(a) or 5(g) shall receive securities from the TC as follows:
- (1) The transfer of facilities to the TC shall be structured (i) to avoid or minimize material adverse tax consequences for the transferor as a result of the transfer, and (ii) to avoid or minimize material adverse rate consequences, not arising out of combining the TC's facilities into a single zone in the MISO.
  - (2) The PSC shall review the proposed structure of the transfer to determine that it meets the objectives of this section, and

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may modify the structure if necessary to accomplish those objectives, and take such other actions as are necessary to equitably accomplish the objectives set forth in this section, including permitting a public-utility affiliate to recover in retail rates any adverse tax consequences of the transfer as a transition cost.

- (3) To the extent possible, the transfer shall be structured to meet the requirements of the IRS for a tax-free transfer. If possible, qualified preferred stock shall be issued in connection with the transfer to provide the fixed cost portion of the resulting capital structure. In the event preferred stock is issued it shall be issued on a basis that does not dilute the voting rights of initial shareholders relative to the value of their contributions. If the capital structure of the TC has a percentage of common equity that is materially higher than that of the transferors, or if the cost of the fixed-cost portion of the capital structure of the TC is materially higher than that of the transferors, the transferors shall agree by contract to accept from the TC a return on common equity based upon the equity rate of return approved by the federal energy regulatory commission and upon an imputed capital structure that assigns to a portion of their common equity holdings an imputed debt return, as is necessary to achieve the objectives of this

*imputed structure  
capital structure  
needed to  
level 28  
rates*



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section, until such time as the FERC shall determine that the actual capital structure and capital costs of the TC are appropriate and consistent with industry practice for a regulated public utility providing electric transmission service in interstate commerce.

- (4) The TC shall provide an opinion to the commission prior to commencement of operations from a nationally-recognized investment banking firm that the TC will be able to finance its start-up costs, working capital, operating expenses and the cost of planned new facilities at reasonable cost.

- (5) Nothing in this subsection shall affect the authority of the federal energy regulatory commission to establish transmission rates for the TC or MISO.

- (6) If, when a public-utility affiliate files its binding commitment under sec. (4), it has an application to construct transmission facilities pending at the public service commission, or has been granted a CPCN for such facilities, the public-utility affiliate shall:

- a. diligently pursue approval of such application and construction of any facilities authorized by the public service commission;
- b. transfer such facilities to the TC at net book value when construction is completed in exchange for additional securities of the TC on a basis consistent

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with the initial exchange, provided that the public service commission determines that the cost of the facilities is reasonable and prudent.

If the construction of any transmission facilities that are subject to a pending or granted CPCN on the date of the binding commitment are not completed within three years of the date of commitment, the responsibility to complete the project shall be transferred to the TC at the option of the TC, and the public-utility affiliate's reasonable and prudent investment to date shall be contributed to the TC in exchange for securities.

m. the bylaws of the TC shall provide as follows:

- (1) There shall be no less than 5 directors and no more than 14. The number shall be 5 unless more directors are required to comply with the provisions below, in which case, the number of directors shall be increased accordingly. This provision of the TC's bylaws may be modified during the first 10 years after the TC comes into existence only upon a unanimous affirmative vote of the directors, and thereafter upon a two-thirds vote of the directors.
- (2) For the first 10 years after the TC comes into existence, each shareholder that owns 10% or more of the outstanding common stock of the TC shall be entitled to appoint one and only one director to the board of directors. These directors

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shall have terms of one year each. Two or more shareholders that together own at least 10% of the common stock of the TC may by a written agreement with a term at least equal to the term of a director under the bylaws combine the voting rights of their common stock for the purpose of jointly appointing a director. Such agreement must be filed with the secretary of the TC. During the ten-year period set forth in this section, the provision of the bylaws of the TC containing this requirement may be modified only upon the unanimous vote of all directors. Thereafter, such requirement may be modified by a two-thirds vote of the directors.

- (3) For the first 10 years after the TC comes into existence, each shareholder which is an investor-owned transmission utility in the transmission area (*i.e.*, WEPCO, WPL, WPS, MGE) and which has contributed its transmission facilities to the TC as set forth above in sections (4) and (5), and any person who receives at least a 5% equity interest under secs. 4(h) or 4(i) above, shall be entitled to appoint one and only one director to the board of directors, provided that it continues to own all of the stock which it has received from the TC for such contribution. This director shall be instead of the director for which the utility would qualify based upon 10% stock ownership under (2) above.

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- (4) There shall be four directors at all times who are elected by a majority of the votes of the holders of common stock and who are not employed by, or under contract to, any entity engaged in the production, sale, marketing, transmission or distribution of electricity or natural gas, or by or to any affiliate of any such entity. These directors shall have staggered terms of four years each.
- (5) For the first five years following creation of the TC, none of the public utility affiliates that transfer transmission facilities to the TC, or any affiliate of such public utility affiliates, shall increase its percentage share of the outstanding common stock of the TC, including any percentage share of such outstanding common stock owned or controlled by any affiliate of such utility affiliate, prior to the first issuance of common stock by the TC to any third party, other than a third party exercising a right to purchase shares under section 5(h). This restriction shall not apply to common stock used in exchange for a contribution of additional transmission facilities. This provision of the bylaws of the TC may be modified during the first five years only upon the unanimous vote of all directors.
- (6) Beginning 36 months after the TC is formed, any holder of 10% of the voting shares may require that the TC register as is necessary for any equity owner to sell its shares.

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- n. for the first 36 months of operation, the TC shall, subject if necessary to the approval of the appropriate regulatory agencies, enter into contracts with the transmission utilities which transfer their facilities to the TC for the purpose of providing reasonable and cost-effective operation, and maintenance services to the TC; thereafter, the TC may continue to contract with each transmission utility. At the end of the final contract period, the provisions of Subsection 8 shall apply.
- o. the TC shall have the authority to expand through the voluntary purchase or acquisition of additional transmission facilities, subject to the approval of the appropriate regulatory agencies;
- p. the TC shall assume any obligations of transmission utilities that transfer ownership of transmission facilities to the TC under agreements to provide transmission service over their facilities (*e.g., certain joint-plant agreements*), or credits for the use of certain transmission facilities of transmission users (*e.g., munis and coops who currently receive facilities credits*) as modified from time to time by agreement of the TC with other parties to such agreements or by regulatory agencies with lawful authority to modify such agreements or credits;
- q. the TC shall make whichever filings are necessary to commence operation with service to begin by 11/1/2000; the TC shall be the transmission service provider in the transmission area until the MISO is operational;

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- r. the TC may not sell, transfer, or merge its assets with another person, unless such assets are sold, transferred, or merged on an integrated basis, and in a manner which insures that the transmission facilities in the transmission area (*i.e.*, EWU) are planned, constructed, operated, maintained and controlled as a single transmission system;
- s. nothing in this section shall be interpreted to authorize or allow the TC to bypass the distribution facilities of any electric utility or to provide its services directly to any retail customer;
- t. except as specifically provided in this section, the obligations of any electric utility that has contributed its transmission facilities to the TC to finance, build, maintain, or operate transmission facilities shall terminate upon operation of the TC;
- u. nothing in this section shall be interpreted to affect the right or duty of an electric utility which is not in the transmission area and which has not contributed its facilities to the TC from constructing transmission facilities;
- v. Section 200.01(2) is amended to exclude the TC from the definition of "public service corporation" (*i.e.*, *issuance of securities by TC not subject to prior PSC approval*). Section 196.795(1)(g) and (h) are amended to exclude the TC from the definition of a holding company and forming a holding company. Because the TC is primarily a FERC-jurisdictional entity, the provisions of chapter 196 regarding rates, service, and accounting shall not apply to the

TC = PSC  
- 5/18/99  
- PSC  
- FERC

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TC. Any dividends from the TC or gain or profit from the sale or disposition by transmission utilities of their securities in the TC shall not be a credit against retail revenue requirements. Section 196.52 (*affiliated-interest statute*) is amended to provide an exclusion for the sale or disposition by transmission utilities of their securities in the TC, but affiliated-interest approval applies for transactions (including service contracts) between transmission utilities and the TC.

6. If the independent system operator referred to above in sections (4) and (5) does not commence operation, or ceases operation, the actions referred to above in sections (4) and (5) and in sec. 196.485(3)(bm) shall apply to the successor thereto, or if there is no successor, to any other regional transmission organization approved or authorized by the federal energy regulatory commission to operate in an area that includes the state, provided that the public service commission shall ensure that a condition of transfer of any public utility's transmission facilities to such regional transmission organization shall be that it meets the standards of sec. 196.485 and complies with the other provisions of chapter 196 of the statutes.

7. Sec. 76.28 of the statutes is amended as follows:

- (d) "Gross revenues" for a light, heat and power company other than a qualified wholesale electric company or a transmission company as defined in sec. 196.\_\_\_\_ means total operating revenues as reported to the public service commission except revenues for

prev. &  
dividends  
to TC  
+ commission  
revenue

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interdepartmental sales and for interdepartmental rents . . . . For a qualified wholesale electric company, "gross revenues" means total business revenues from those businesses included under par. (e)I. to 4. For a transmission company, "gross revenue" means total operating revenues as reported to the public service commission except revenues for transmission service over its facilities provided to public utilities subject to the annual license fee under Wis. Stats. 72.28(2)(c)(2) or to other electric utilities as defined in chapter 196.

- (e) . . . including corporations described in s. 66.069(2) and including qualified wholesale electric companies and including transmission companies as defined in sec. 196.\_\_\_\_ and except only business enterprises carried on exclusively either for the private use of the . . . .

. . . hot water for heat, power or manufacturing purposes.

5. Transmitting electric current for light, heat or power.

(em) "Net production of electricity" means. . . .

(2) IMPOSITION . . .

- (e) for transmission companies, as defined in sec. 196.\_\_\_\_, an amount equal to the gross revenues, except revenues for transmission service over its facilities provided to public utilities subject to the annual license fee under Wi. Stat. 72.28(2)(c)(2) or to other electric utilities as defined in chapter 196, multiplied by the rates under par. (b) or (c).



**Confidential**

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8. Sec. 196.485(3)(bm) is amended to read:

Each of the transmission utilities in the transmission area that are public utilities shall transfer control over their transmission facilities to the MISO and shall elect with the TC, after it becomes operational, if such transmission utilities have not transferred their transmission facilities to the TC, to become part of a single zone within the MISO. Such independent system operator shall ensure that the transmission facilities in the transmission area are planned, constructed, operated, maintain and controlled as a single system.

9. In the event of a lease, sale, or any other transfer of ownership or control (hereinafter "Transaction") of one, more, or all divisions, departments, or business units, or any other assets (hereinafter "Unit") of a public utility, a public utility-affiliate or a non-utility affiliate of a holding company engaged in the production, generation, transmission, or distribution of electricity, gas, or steam, or the recovery of energy from waste materials (hereinafter "Selling Entity") in this state, the terms of the Transaction with the acquiring entity or person(s) shall require the acquiring entity or person(s) to offer employment to a sufficient number of the non-supervisory employees working in the Unit at the time of the Transaction in order to operate and maintain the Unit. The acquiring entity or person(s) must offer such employees employment at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment (hereinafter "Employment Terms") that are in effect at the time of the Transaction. The acquiring entity or

196.80  
Same type  
Transaction

**Confidential**

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person(s) shall maintain the Employment Terms during the 30 months following the Transaction unless different terms and conditions of employment are collectively bargained.

If there is a Transaction of a Selling Entity's Unit(s) in this state to its majority-owned non-utility affiliate, the acquiring non-utility affiliate shall continue to employ the Selling Entity employees who were working in the Unit(s) at the time of the Transaction under the same terms and conditions of employment existing at the time of the Transaction.

Prior to approving any transaction, the public service commission shall first determine that the Employment Terms are in place, as set forth above.

Sec. 196.795(5)(i) is amended to read:

In its determination of any rate change proposed by a public utility affiliate under s. 196.20, the commission:

1. Shall consider the public utility affiliate as a wholly independent corporation; and shall impute a capital structure to the public utility affiliate and establish a cost of capital for the public utility on a stand-alone basis.

Sec. 196.795(5)(t), Stats., is created to read:

If the commission determines that a public-utility affiliate or, for transmission, the transmission company, is not making investments in its facilities sufficient to ensure reliable electric service, the commission shall order the public utility

**Confidential**

**May 18, 1999**

affiliate or transmission company to make adequate investments in its facilities sufficient to ensure reliable service. Such order shall require that the public-utility affiliate or transmission company provide sufficient security in a form that is readily enforceable and satisfactory to the commission, and that is sufficient to ensure that such investments are made expeditiously. The commission shall allow the public-utility affiliate to recover in its retail electric rates costs that are prudently incurred in complying with this subsection.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3150/P1dn

MDK:kmg:mrc

June 3, 1999

Senator Chvala:

Please review this preliminary draft, which is based on language suggested by the Customers First! Coalition (CFC), very carefully to make sure that it achieves your intent. For purposes of drafting, I have divided the CFC request into 3 parts: 1) public benefits (this draft); 2) asset cap changes (LRB-3151); and 3) CFC white paper, including transmission facility impact fee and environmental impact fee (LRB-3152). When they are finalized, the 3 parts may be combined into one bill or budget amendment.

With respect to this draft, note that the utility public benefits provisions are included in ch. 16, stats., rather than in ch. 196, stats.

In addition, note that the draft contains embedded notes that raise questions that must be resolved before the draft is finalized. If you have any questions about these notes, please give me a call.

Finally, it may be advisable to allow the PSC to review this draft to determine whether any changes to ch. 196, stats., are necessary to conform to the requirements of the draft.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: Mark.Kunkel@legis.state.wi.us

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P.02



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-3150/P1  
MDK:kmg:mrc

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Please deliver to Mark Kunkel immediately

→ CFC mark-up  
6/5/99

From: Lee Cullen  
25 0101  
929 B471

1 AN ACT to ~~repeat~~ and recreate 196.374; and to create 15.107 (17), 16.957,  
2 20.505 (10), 25.17 (1) (xm), 25.96 and 196.378 of the statutes; relating to:  
3 establishing programs for low-income energy assistance, improving energy  
4 conservation and efficiency markets and encouraging the development and use  
5 of renewable resources, creating a council on utility public benefits,  
6 establishing a utility public benefits fund, requiring electric utilities and retail  
7 electric cooperatives to charge public benefits fees to customers and members,  
8 imposing requirements on the use of renewable resources by electric utilities  
9 and cooperatives, requiring the exercise of rule-making authority, making  
10 appropriations and providing a penalty.

---

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

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MDK:kmg:mrc

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1 SECTION 1. 15.107 (17) of the statutes is created to read:

2 15.107 (17) COUNCIL ON UTILITY PUBLIC BENEFITS. There is created a council on  
3 utility public benefits that is attached to the department of administration under s.  
4 15.03. The council shall consist of the following members appointed for 3-year  
5 terms:

- 6 (a) Two members appointed by the governor.
- 7 (b) Two members appointed by the senate majority leader.
- 8 (c) One member appointed by the senate minority leader.
- 9 (d) Two members appointed by the speaker of the assembly.
- 10 (e) One member appointed by the assembly minority leader.
- 11 (f) One member appointed by the secretary of natural resources.
- 12 (g) One member appointed by the secretary of administration.
- 13 (h) One member appointed by the chairperson of the public service commission.

14 SECTION 2. 16.957 of the statutes is created to read:

15 **16.957 Utility public benefits. (1) DEFINITIONS.** In this section:

16 (bm) "Commission" means the public service commission.

17 (c) "Commitment to community program" means a program by a municipal  
18 utility or retail electric cooperative for low-income assistance or an energy  
19 conservation ~~or load management~~ program by a municipal utility or retail electric  
20 cooperative.

no p.3



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LRD-3100/F1 04  
MDK:kmg:mrc  
SECTION 2

1 (cm) "Council" means the council on utility public benefits created under s.  
2 15.107 (17).

3 (d) "Customer application of renewable resources" means the generation of  
4 electricity from renewable resources that takes place on the premises of a customer  
5 of an electric provider.

6 (e) "Division of housing" means the division of housing in the department.

7 (f) "Electric provider" means an electric utility or retail electric cooperative.

8 (g) "Electric utility" means a public utility that owns or operates a retail electric  
9 distribution system.

10 (h) "Energy conservation program" means a program for reducing the demand  
11 for electricity or improving the efficiency of its use during any period.

12 (i) "Fiscal year" has the meaning given in s. 655.001 (6).

13 (j) ~~"Load management program" means a program that allows an electric~~  
14 ~~provider or its wholesale supplier to control electric usage by customers and reduce~~  
15 ~~demand for electricity.~~

....NOTE: Although the suggested language deletes the above definition, this  
version retains the definition of "load management program" because the term is used in  
the definition of "commitment to community program". Is this okay?

16 (k) "Local unit of government" means the governing body of any county, city,  
17 town, village or county utility district or the elected tribal governing body of a  
18 federally recognized American Indian tribe or band.

19 (L) "Low-income assistance" means assistance to low-income households for  
20 weatherization and other energy conservation services, payment of energy bills or  
21 early identification or prevention of energy crises.

22 (m) "Low-income household" means any individual or group of individuals in  
23 this state who are living together as one economic unit and for whom residential

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MDK:kmg:mrc  
SECTION 2

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1 electricity is customarily purchased in common or who make undesignated  
2 payments for electricity in the form of rent, and whose household income is not more  
3 than 150% of the poverty line as determined under 42 USC 9902 (2).

4 (n) "Low-income need" means the amount obtained by subtracting from the  
5 total low-income energy bills in a fiscal year the product of 2.2% of the estimated  
6 average annual income of low-income households in this state in that fiscal year  
7 multiplied by the estimated number of low-income households in this state in that  
8 fiscal year.

9 (o) "Low-income need percentage" means the percentage that results from  
10 dividing the sum of each of the following by the amount of low-income need in fiscal  
11 year 1998-99:

12 1. The total amount received by the department for low-income funding.

....NOTE: Subdivision 1. must be clarified. What is the source of the "low-income  
funding"?

13 2. The total amount spent on programs or contributed to the commission by  
14 utilities under s. 196.374 (3).

15 3. Fifty percent of the public benefits fees charged by municipal utilities and  
16 retail electric cooperatives.

....NOTE: In addition to the clarification of subd. 1., this entire definition should be  
clarified. I don't know whether the low-income need percentage should be allowed to  
change each year or, as under a prior version of this draft, remain constant.

17 (p) "Low-income need target" means the product of the low-income need  
18 percentage multiplied by low-income need in a fiscal year.

19 (q) "Municipal utility" means an electric utility that is owned ~~or operated~~  
20 wholly by a municipality *and that owns a retail distribution system.*

....NOTE: The definition of "electric utility" includes the requirement regarding  
ownership/operation of a retail electric distribution system. Therefore, this requirement  
does not need to be repeated in the above definition. - NO - owns and operates

*see revised  
language provided  
by CRC*



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MDK:kmg:mrc  
SECTION 2

1 (qm) "Public utility" has the meaning given in s. 196.01 (5).

2 (r) "Renewable resource" has the meaning given in s. 196.378 (1) (g).

3 (s) "Retail capacity" means the total amount of electricity that an electric  
4 provider is capable of delivering to its retail customers and that is supplied by electric  
5 generating facilities owned or operated by the electric provider or any other person.  
6 "Retail capacity" does not include any electricity that is not used to satisfy the electric  
7 provider's retail load obligations.

8 (t) "Retail electric cooperative" means a cooperative association that is  
9 organized under ch. 185 for the purpose of providing electricity at retail to its  
10 members only and that owns or operates a retail electric distribution system.

11 (u) "Total low-income energy bills" means the total estimated amount that all  
12 low-income households are billed for residential electricity, natural gas and heating  
13 fuel in a fiscal year.

14 (v) "Wholesale electric cooperative" means a cooperative association that is  
15 organized under ch. 185 for the purpose of providing electricity at wholesale to its  
16 members only.

17 (w) "Wholesale supply percentage" means the percentage of a municipal  
18 utility's or retail electric cooperative's retail capacity in a fiscal year that is supplied  
19 by a wholesale supplier.

20 (x) "Wholesale supplier" means a wholesale electric cooperative or a municipal  
21 electric company, as defined in s. 66.073 (3) (d), that supplies electricity at wholesale  
22 to a municipal utility or retail electric cooperative.

23 (2) DEPARTMENT DUTIES. In consultation with the council, the department shall  
24 do all of the following:

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MDK:kmg:mrc  
SECTION 2

1 (a) *Low-income programs*. After holding a hearing, establish programs to be  
2 administered by the department of administration through the division of housing  
3 for awarding grants from the appropriation under s. 20.505 (10) (r) to provide  
4 low-income assistance. In each fiscal year, no less than the amount obtained by  
5 subtracting from \$50,000,000 the sum of all moneys received under 42 USC 6861 to  
6 6873 in a fiscal year shall be awarded under this paragraph in grants for  
7 weatherization and other energy conservation services.

\*\*\*\*NOTE: The council has only an advisory role. Therefore, this draft requires the  
department, rather than the council, to hold a hearing. Also, note that the requirement  
to consult with the council under proposed s. 16.957 (2) (intro.) applies to each paragraph  
in sub. (2). Therefore, there is no need to repeat this requirement in each paragraph

OK

8 (b) *Energy conservation and efficiency and renewable resource programs*. 1.  
9 Subject to subd. 2., after holding a hearing, establish programs for awarding grants  
10 from the appropriation under s. 20.505 (10) (s) for each of the following:  
11 a. Proposals for providing energy conservation or efficiency services. In  
12 awarding grants under this subd. 1. a., the department shall give priority to  
13 proposals directed at the sectors of energy conservation or efficiency markets that  
14 are least competitive and at promoting environmental protection, electric system  
15 reliability or rural economic development. In each fiscal year, 1.75% of the  
16 appropriation under s. 20.505 (10) (s) shall be awarded in grants for research and  
17 development proposals regarding the environmental impacts of the electric industry.  
18 b. Proposals for encouraging the development or use of customer applications  
19 of renewable resources, including educating customers about renewable resources  
20 or encouraging uses of renewable resources by customers or encouraging research  
21 technology transfers. In each fiscal year, the department shall ensure that 4.5% of  
22 the appropriation under s. 20.505 (10) (s) is awarded in grants under this subd. 1. b.



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SECTION 2

1           2. For each fiscal year after fiscal year 2003-04, determine whether to continue,  
2       discontinue or reduce any of the programs established under subd. 1. and determine  
3       the total amount necessary to fund the programs that the department determines  
4       to continue or reduce under this subdivision. The department shall notify the  
5       commission if the department determines under this subdivision to reduce funding.

6           (c) *Rules.* Promulgate rules establishing all of the following:

7           1. Eligibility requirements for low-income assistance under programs  
8       established under par. (a). The rules shall prohibit a person who receives  
9       low-income assistance from a municipal utility or retail electric cooperative under  
10      a program specified in sub. (5) (d) 2. b. or 3. a. from receiving low-income assistance  
11      under programs established under par. (a).

12          2. Requirements and procedures for applications for grants awarded under  
13      programs established under par. (a) or (b) 1.

14          2m. Criteria for the selection of proposals by the corporation specified in sub.  
15      (3) (b).

16          2n. Criteria for making the determination under par. (b) 2. Rules promulgated  
17      under this subdivision shall require the department to determine whether the need  
18      for a program established under par. (b) 1. is satisfied by the private sector market  
19      and, if so, whether the program should be discontinued or reduced.

20          4. Requirements for electric utilities to allow customers to include voluntary  
21      contributions to assist in funding a commitment to community program or a program  
22      established under par. (a) or (b) 1. with bill payments for electric service. The rules  
23      may require an electric utility to provide a space on an electric bill in which a  
24      customer may indicate the amount of a voluntary contribution and the customer's  
25      preference regarding whether a contribution should be used for a program

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SECTION 2

1 established under par. (a) or (b) 1. a. or b. The rules shall establish requirements and  
2 procedures for electric utilities to pay to the department any voluntary contributions  
3 included with bill payments and to report to the department customer preferences  
4 regarding use of the contributions. The department shall deposit all contributions  
5 received under this paragraph in the utility public benefits fund.

6 5. A method for estimating total low-income energy bills, average annual  
7 income of low-income households and the number of low-income households in a  
8 fiscal year for the purpose of determining the amount of low-income need in the fiscal  
9 year.

10 (d) *Other duties.* 1. For each fiscal year after fiscal year 1998-99, determine  
11 the low-income need target for that fiscal year.

12 2. Encourage customers to make voluntary contributions to assist in funding  
13 the programs established under pars. (a) and (b) 1. The department shall deposit all  
14 contributions received under this paragraph in the utility public benefits fund.

15 3. Deposit all moneys received under sub. (4) (a) or (5) (c) or (d) in the utility  
16 public benefits fund.

17 4. Conduct an annual independent audit and submit an annual report to the  
18 legislature under s. 13.172 (2) that describes each of the following:

19 a. The expenses of the department, other state agencies and grant recipients  
20 in administering or participating in the programs under pars. (a) and (b).

21 b. The effectiveness of the programs under par. (a) in providing assistance to  
22 low-income individuals.

23 c. The effectiveness of the programs under par. (b) in reducing demand for  
24 electricity and increasing the use of customer-owned renewable resources.



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SECTION 2

1 d. Any other issue identified by the governor, speaker of the assembly or  
2 majority leader of the senate.

3 (3) CONTRACTS. (a) The division of housing shall, on the basis of competitive  
4 bids, contract with community action agencies described in s. 46.30 (2) (a) 1.,  
5 nonstock, nonprofit corporations organized under ch. 181 or local units of  
6 government to provide services under the programs established under sub. (2) (a).

7 (b) The department shall, on the basis of competitive bids, contract with a  
8 nonstock, nonprofit corporation organized under ch. 181 to administer the programs  
9 established under sub. (2) (b) 1., including soliciting proposals, processing grant  
10 applications, selecting, based on criteria specified in rules promulgated under sub.  
11 (2) (c) 2m., proposals for the department to make awards and distributing grants to  
12 recipients.

13 (c) In selecting proposals and awarding contracts under sub. (2) (b), the  
14 department or the nonprofit corporation specified in par. (b) may not discriminate  
15 against ~~an affiliate of~~ <sup>or its affiliate</sup> an electric provider or wholesale electric supplier <sup>or its affiliate</sup> solely on the  
16 basis of its ~~affiliation with the~~ <sup>status as an</sup> electric provider ~~or~~ <sup>or affiliate</sup> wholesale electric supplier.

OK <sup>....NOTE: I think the prohibition regarding discrimination includes disqualifying  
or penalizing. Also, I think it's necessary to specify the grounds on which discrimination  
may not occur. Otherwise, isn't the prohibition overbroad?</sup>

OK - ~~except non discrimination against electric provider/wholesale~~  
~~electric provider also prohibited~~  
17 (4) ELECTRIC UTILITIES. (a) ~~Requirement to charge public benefits fees.~~ Each  
18 electric utility, except for a municipal utility or a retail electric cooperative, shall  
19 charge each customer a public benefits fee in an amount established in rules  
20 promulgated by the department under par. (b). An electric utility ~~or a retail electric~~  
21 ~~cooperative~~, except for a municipal utility or a retail electric cooperative, shall collect  
22 and pay the fees to the department in accordance with the rules promulgated under  
23 par. (b).

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SECTION 2

1 (am) *Electric bill surcharge*. An electric utility ~~may~~ <sup>shall</sup> include a public benefits  
2 fee ~~as a surcharge on a customer's bill if the electric utility also provides~~ <sup>IN and shall</sup> the customer  
3 with an annual statement that identifies the annual charges for public benefits fees  
4 and describes the programs for which fees are used.

....NOTE: Should the statement identify the charges to all customers, or just the  
particular customer who receives the statement? <sup>NO</sup> ~~yes - the class of customers~~

5 (b) *Rules*. In consultation with the council, the department shall promulgate  
6 rules that establish the amount of a public benefits fee under par. (a). Fees  
7 established in rules under this paragraph may vary by class of customer, but shall  
8 be uniform within each class, and shall satisfy each of the following:

9 1. The fees may not be based on the kilowatt-hour consumption of electricity  
10 by customers.

11 2. No more than 70% of the total amount of fees may be charged to residential  
12 customers and no more than 30% of the total may be charged to nonresidential  
13 customers.

....NOTE: Subdivision 2. should be revised to specify how the 70%/30% is calculated. <sup>yes</sup>  
Does the requirement apply to each electric provider? Or is it an aggregate requirement? <sup>NO</sup>

14 3. The fees shall allow an electric provider to recover the reasonable and  
15 prudent expenses incurred by the electric provider in complying with this section.

....NOTE: The suggested language referred to expenses resulting from <sup>OK</sup>  
administering programs. However, public utilities do not administer programs under the  
bill.

16 (c) *Amount of public benefits fees*. A fee established in rules promulgated under  
17 par. (b) shall satisfy each of the following:

18 1. 'Low-income funding.' In fiscal year 1999-2000, a portion of the public  
19 benefits fee shall be an amount that, when added to 50% of the estimated public  
20 benefits fees charged by municipal utilities and retail electric cooperatives under  
21 sub. (5) (a) for that fiscal year, shall equal \$27,000,000. In each fiscal year after fiscal



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1 year 1999-2000, a portion of the public benefits shall be an amount that, when added  
2 to the sum of the following shall equal the low-income need target for that fiscal year  
3 determined by the department under sub. (2) (d) 1.:

4 a. Fifty percent of the estimated public benefits fees charged by municipal  
5 utilities and retail electric cooperatives under sub. (5) (a) for that fiscal year.

6 b. All moneys received under 42 USC 6861 to 6873 and 42 USC 8621 to 8629  
7 for that fiscal year.

8 c. The total amount spent on programs or contributed to the commission by  
9 utilities under s. 196.374 (3) for that fiscal year.

....NOTE: Is subd. 1. okay, or should it refer only to amounts contributed to the  
PSC for deposit in the fund?

10 2. 'Energy conservation and efficiency and renewable resource funding.' For  
11 fiscal year 1999-2000, a portion of the public benefits fee shall be in an amount that,  
12 when added to 50% of the estimated public benefits fees charged by municipal  
13 utilities and retail electric cooperatives under sub. (5) (a) for that fiscal year, shall  
14 equal \$20,000,000. In each fiscal year after fiscal year 1999-2000, a portion of the  
15 public benefits shall be the amount determined under this subdivision for fiscal year  
16 1999-2000, except that if the department determines to reduce or discontinue a  
17 program under sub. (2) (b) 2., the department shall reduce the amount accordingly.

....NOTE: The instructions refer to fiscal year 1999-2000 and each fiscal year after  
fiscal year 2002-03, but I'm not sure what you intend for fiscal years 2000-01 and  
2001-02. Is the above language okay?

18 *Limitation ON*  
3. 'Electric bill increases.' For the period beginning on the effective date of this  
19 subdivision .... [revisor inserts date], and ending on June 30, 2008, the total increase  
20 in a customer's electric bills that is based on the requirement to pay public benefits  
21 fees, including any increase resulting from an electric utility's compliance with this

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SECTION 2

1 section, may not exceed 3% of the total of every other charge for which the customer  
2 is billed for that period, *or \$750 per month, whichever is less.*

....NOTE: The suggested language refers to increases resulting from an electric utility's administration of programs. However, electric utilities do not administer programs under this bill. Is the above language okay?

3 (5) MUNICIPAL UTILITIES AND RETAIL ELECTRIC COOPERATIVES. (a) *Requirement to*  
4 *charge public benefits fees.* Each retail electric cooperative and municipal utility  
5 shall charge a monthly public benefits fee to each customer or member in amount  
6 that is sufficient for the retail electric cooperative or municipal utility to collect an  
7 annual average of \$17 per meter. A retail electric cooperative or municipal utility  
8 may determine the amount that a particular class of customers or members is  
9 required to pay under this paragraph and may charge different fees to different  
10 classes of customers or members.

11 (am) *Public benefits fee restriction.* Notwithstanding par. (a), for the period  
12 beginning on the effective date of this paragraph .... [revisor inserts date], and ending  
13 on June 30, 2008, the total increase in a customer's or member's electric bills that is  
14 based on the requirement to pay public benefits fees *X* may not exceed 3% of the total  
15 of every other charge for which the member or customer is billed for that period *or*

....NOTE: Should par. (am) have the language regarding increases resulting from *\$750 per month, whichever is less* compliance with this section, as in sub. (4)(c) 3.?

16 (b) *Election to contribute to department programs.* 1. No later than the first  
17 day of the 12th month beginning after the effective date of this subdivision ....  
18 [revisor inserts date], each municipal utility or retail electric cooperative shall notify  
19 the department whether it has elected to contribute to the programs established  
20 under sub. (2) (a) or (b) 1. for a 3-year period.

21 2. No later than every 3rd year after the date specified in subd. 1., each  
22 municipal utility or retail electric cooperative shall notify the department whether



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SECTION 2

1 it has elected to contribute to the programs established under sub. (2) (a) or (b) 1. for  
2 a 3-year period.

3 (c) *Full contribution.* If a municipal utility or retail electric cooperative elects  
4 under par. (b) 1. or 2. to contribute to the programs established both under sub. (2)  
5 (a) and under sub. (2) (b) 1., it shall pay 100% of the public benefits fees that it charges  
6 under par. (a) to the department in each fiscal year of the 3-year period for which it  
7 has made the election.

8 (d) *Partial contributions and commitment to community spending.* A  
9 municipal utility or retail electric cooperative not specified in par. (c) shall do one of  
10 the following:

11 1. If the municipal utility or retail electric cooperative elects to contribute only  
12 to the programs established under sub. (2) (a), the municipal utility or retail electric  
13 cooperative shall, in each fiscal year of the 3-year period for which it elects to  
14 contribute under par. (b) 1. or 2., do all of the following:

15 a. Pay no less than 50% of the public benefits fees that it charges under par.  
16 (a) to the department.

17 b. Spend no less than 50% of the public benefits fees that it charges under par.  
18 (a) on energy conservation programs.

19 2. If the municipal utility or retail electric cooperative elects to contribute only  
20 to the programs established under sub. (2) (b) 1., the municipal utility or retail  
21 electric cooperative shall, in each fiscal year of the 3-year period for which it elects  
22 to contribute under par. (b) 1. or 2., do all of the following:

23 a. Pay 50% of the public benefits fees that it charges under par. (a) to the  
24 department.

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SECTION 2

1           b. Spend no less than 50% of the public benefits fees that it charges under par.  
2           (a) on programs for low-income assistance.

3           3. If the municipal utility or retail electric cooperative elects not to contribute  
4           to any of the programs established under sub. (2) (a) or (b) 1., the municipal utility  
5           or retail electric cooperative shall, in each fiscal year of the 3-year period for which  
6           it elects not to contribute under par. (b) 1. or 2., do all of the following:

7           a. Spend no less than 50% of the public benefits fees that it charges under par.  
8           (a) on programs for low-income assistance.

9           b. Spend no less than 50% of the public benefits fees that it charges under par.  
10          (a) on energy conservation programs.

11          (e) *Wholesale supplier credit.* If a wholesale supplier has established a program  
12          for low-income assistance or an energy conservation program, a municipal utility or  
13          retail electric cooperative that is a customer of the wholesale supplier may do any of  
14          the following:

15           1. Include an amount equal to the product of the municipal utility's or retail  
16           electric cooperative's wholesale supply percentage and the amount that the  
17           wholesale supplier has spent on low-income assistance in a fiscal year in calculating  
18           the amount that the municipal utility or retail electric cooperative has spent on  
19           low-income assistance in that fiscal year under par. (d) 2. b. or 3. a.

20           2. Include an amount equal to the product of the municipal utility's or retail  
21           electric cooperative's wholesale supply percentage and the amount that the  
22           wholesale supplier has spent on energy conservation programs or customer  
23           applications of renewable resources in a fiscal year in calculating the amount that  
24           the municipal utility or retail electric cooperative has spent on energy conservation  
25           programs under par. (d) 1. b. or 3. b.



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SECTION 2

1 (f) *Joint programs.* Municipal utilities or retail electric cooperatives may  
2 establish joint commitment to community programs, except that each municipal  
3 utility or retail electric cooperative that participates in a joint program is required  
4 to comply with the spending requirements under par. (d).

5 (g) *Reports.* 1. For each fiscal year, each municipal utility and retail electric  
6 cooperative that does not pay 100% of the public benefits fee that it charges under  
7 par. (a) to the department under par. (c) shall file a report with the department that  
8 describes each of the following:

9 a. An accounting of public benefits fees charged to customers or members under  
10 par. (a) in the fiscal year and expenditures on commitment to community programs  
11 under par. (d), including any amounts included in the municipal utility's or retail  
12 electric cooperative's calculations under par. (e).

13 b. A description of commitment to community programs established by the  
14 municipal utility or retail electric cooperative in the fiscal year.

15 2. The department shall maintain reports filed under subd. 1. for at least 6  
16 years.

17 SECTION 3. 20.005 (3)(schedule) of the statutes: at the appropriate place, insert  
18 the following amounts for the purposes indicated:

19 1999-00 2000-01

20 20.505 Administration, department of

21 (10) UTILITY PUBLIC BENEFITS

22 (q) General program operations SEG A -0- -0-

23 SECTION 4. 20.505 (10) of the statutes is created to read:

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SECTION 4

1           20.505 (10) UTILITY PUBLIC BENEFITS. (q) *General program operations.* From  
2           the utility public benefits fund, the amounts in the schedule for general program  
3           operations.

4           (r) *Low-income assistance grants.* From the utility public benefits fund, a sum  
5           sufficient for low-income assistance grants under s. 16.957 (2) (a).

6           (s) *Energy conservation and efficiency and renewable resource grants.* From the  
7           utility public benefits fund, a sum sufficient for energy conservation and efficiency  
8           and renewable resource grants under s. 16.957 (2) (b) 1.

9           **SECTION 5.** 25.17 (1) (xm) of the statutes is created to read:

10          25.17 (1) (xm) Utility public benefits fund (s. 25.96);

11          **SECTION 6.** 25.96 of the statutes is created to read:

12          **25.96 Utility public benefits fund.** There is established a separate  
13          nonlapsible trust fund designated as the utility public benefits fund, consisting of  
14          deposits by the public service commission under s. 196.374 (3), public benefits fees  
15          received under s. 16.957 (4) (a) and (5) (c) and (d) and contributions received under  
16          s. 16.957 (2) (c) 4. and (d) 2.

17          **SECTION 7.** 196.374 of the statutes is repealed and recreated to read:

18          **196.374 Low-income assistance, energy efficiency and other**  
19          **programs.** (1) In this section:

20           (a) "Department" means the department of administration.

21           (b) "Fund" means the utility public benefits fund.

22           (c) "Utility" means a class A gas or electric utility, as defined by the commission,  
23           ~~a municipal electric company, as defined in s. 66.073 (3) (d),~~  
24           but does not include a municipal utility, as defined in s. 16.957 (1) (q), or a cooperative  
            association organized under ch. 185.



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SECTION 7

1 (2) The commission shall determine the amount that each utility spent in 1998  
 2 on programs for low-income assistance, including writing off uncollectibles and  
 3 arrearages, low-income weatherization, energy conservation and efficiency,  
 4 environmental research and development, and renewable resources.

5 (3) In 1999, 2000 and 2001, the commission shall require each utility to spend  
 6 a decreasing portion of the amount determined under sub. (2) on programs specified  
 7 in sub. (2) and contribute an increasing portion of the amount to the commission for  
 8 deposit in the fund. *must equal the amt specified*  
 9 amount determined under sub. (2) to the commission for deposit in the fund. The  
 10 commission shall ensure in rate-making orders that a utility recovers from its

11 ratepayers the amounts spent on programs or contributed to the fund under this

12 subsection. *The commission shall allow each utility the option of continuing to use in 2000  
 the money it is currently recovering to administer its existing energy  
 conservation and efficiency programs. Nothing in this section is intended to prohibit  
 a utility from*

*improvement in* .....NOTE: The instructions require the PSC to equitably allocate the amount  
 determined under sub. (2) among the utilities. I'm not sure what this requirement means.

*the activities* On what basis should the allocation be made? If the utilities must be required to spend  
 the same amount on programs and contributions to the fund in 1999, 2000 and 2001, why  
*described in* not use the language in sub. (3) above? OK - but need to add back last 6 lines of p.25

*this subsection, provided that it is complying with its duties under 196.374 and 196.375*

13 (4) If the department notifies the commission under s. 16.957 (2) (b) 2. that the  
 14 department has reduced funding for energy conservation and efficiency and  
 15 renewable resource programs, the commission shall reduce the amount that a utility  
 16 is required to spend on programs or contribute to the fund under sub. (3) by the  
 17 percentage by which the department has reduced the funding.

18 SECTION 8. 196.378 of the statutes is created to read:

19 196.378 Renewable resources. (1) DEFINITIONS. In this section:

20 (a) "Biomass" means a resource that derives energy from wood or plant  
 21 material or residue, biological waste, crops grown for use as a resource or landfill



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See 42, p. 8 → Non-vegetation-land

1 gases. "Biomass" does not include garbage, as defined in s. 289.01 (9), or industrial,

2 commercial or household waste, *except that biomass does include refuse-derived*  
3 *fuel used for a renewable facility within state electric in service before 11/1/98*  
(b) "Conventional resource" means a resource that derives energy from coal, oil,

4 nuclear power or natural gas, except for natural gas used in a fuel cell.

5 (bm) "Department" means the department of administration.

6 (c) "Electric provider" means an electric utility or retail electric cooperative.

7 (d) "Electric utility" means a public utility that ~~owns or operates~~ a retail electric

8 ~~distribution system and sells electricity at retail~~ *provided that a public utility*  
*is not considered to sell electricity at retail solely by owning or operating a retail electric*  
....NOTE: Under this above definition, a public utility must both: 1) own or operate *distribution*  
a distribution system; and 2) sell electricity at retail. I think this language is clearer than *system*  
the suggested language. Is it okay? *NO - need suggested language, p. 26*

9 (e) "Excludable renewable capacity" means the portion of an electric provider's

10 total renewable capacity that is supplied from renewable facilities that were placed

11 in service before January 1, 1998, and that, before January 1, 1998, derived

12 electricity from hydroelectric power or biomass, *even if the output of such facilities*  
*is used to satisfy the requirements of federal law.*

13 (f) "Nonsystem renewable energy" means the amount of electricity that an  
14 electric provider sells to its retail customers and that is supplied under executed  
*or allocated*

15 wholesale purchase contracts from renewable facilities that are not owned or

16 operated by the electric provider. "Nonsystem renewable energy" does not include

17 any electricity that is not used to satisfy the electric provider's retail load obligations.

....NOTE: The suggested language refers to electricity that is supplied *or allocated*  
by a wholesale supplier under executed wholesale purchase contracts. I'm not sure what  
is meant by electricity that is allocated, so this language is not included. What is your  
intent regarding allocations under executed wholesale purchase contracts?

18 (g) "Renewable resource" means any of the following: *needed to allow allocation of the renewable portion of*  
*system energy*

19 1. A resource that derives electricity from any of the following:

20 a. A fuel cell that uses, as determined by the commission, a renewable fuel.

21 b. Tidal or wave action.

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1 c. Solar thermal electric or photovoltaic energy.

2 d. Wind power.

3 e. Geothermal technology.

4 g. Biomass.

5 1m. A resource with a capacity of less than ~~60~~ megawatts that derives  
6 electricity from hydroelectric power.

7 2. Any other resource, except a conventional resource, that the commission  
8 designates as a renewable resource in rules promulgated under sub. (4).

9 (h) "Renewable facility" means an installed and operational electric generating  
10 facility in which energy is derived from a renewable resource. "Renewable facility"  
11 includes a facility the installation or operation of which is required under federal law,  
12 but does not include a facility the installation or operation of which is required under  
13 the laws of another state even if the installation or operation of the facility is also  
14 required under federal law.

15 (i) "Renewable resource credit" means a credit calculated in accordance with  
16 rules promulgated under sub. (3) (a).

17 (j) "Resource" means a source of electric power generation.

18 (k) "Retail electric cooperative" means a cooperative association organized  
19 under ch. 185 that ~~owns or operates a retail electric distribution system~~ and sells  
20 electricity at retail. ~~to its members only, provided that...~~ retail electric distribution  
system

....NOTE: See the NOTE under the definition of "electric utility".

21 (n) "System renewable energy" means the amount of electricity that an electric  
22 provider sells to its retail customers and that is supplied by renewable facilities  
23 owned or operated by the electric provider.

6/2, p.27

6/2, p.28

see response to note - language is needed



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1 (o) "Total renewable energy" means the sum of an electric provider's system and  
2 nonsystem renewable energy.

3 (2) RENEWABLE RESOURCE ENERGY. (a) Each electric provider shall provide to its  
4 retail electric customers total renewable energy *from renewable resources* at least the following percentages  
5 of its total retail energy sales, either directly or through renewable resource credits  
6 from another electric provider:

- 7 1. By December 31, 2000, 0.5%.
- 8 2. By December 31, 2002, 0.85%.
- 9 3. By December 31, 2004, 1.2%.
- 10 4. By December 31, 2006, 1.55%.
- 11 5. By December 31, 2008, 1.9%.
- 12 6. By December 31, 2010, 2.2%.

13 (b) For purposes of determining compliance with par. (a):

14 1. Total retail energy sales shall be calculated on the basis of a 3-year rolling  
15 average of an electric provider's retail energy sales in this state.

....NOTE: The draft must clarify what is intended by a "3-year rolling average". *OK*  
Without such clarification, I don't know what the above requirement means. *= average of 3 years prior to year of calculation*

16 2. The amount of electricity supplied by a renewable facility in which biomass  
17 and conventional fuels are fired together shall be equal to the product of the  
18 maximum amount of electricity that the facility is capable of generating and the ratio  
19 of the British thermal unit content of the biomass fuels to the British thermal unit  
20 content of both the biomass and conventional resource fuels.

21 3. Any excludable renewable energy that exceeds 0.6% of an electric provider's  
22 total retail energy sales shall be excluded from the electric provider's total renewable  
23 energy.

*O-NOTE*

*redundant*

*insert 10% renewable system capacity exemption → 6/2, p. 29, lines 6-16*



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1 (c) No later than April 15 annually, an electric provider shall submit a report  
 2 to the department that describes the electric provider's compliance with par. (a).  
 3 Reports under this paragraph may include certifications from wholesale suppliers  
 4 regarding the sources and amounts of energy supplied to an electric provider. The  
 5 department may specify the documentation that is required to be included with  
 6 reports submitted under this paragraph, ~~except that the department may not~~ *← NOT OUR INTENT*  
 7 ~~require additional documentation with respect to a wholesale supplier certification.~~

....NOTE: Why are the reports submitted to DOA? The PSC has other duties *CONSENT*  
 regarding renewable resource credits. Why not submit the reports to the PSC? *Subject to PSC jurisdiction*

8 (d) The commission shall ensure in rate-making orders that an electric utility  
 9 recovers from ratepayers the cost of providing total renewable energy to its retail  
 10 customers in amounts that equal or exceed the percentages specified in par. (a).  
 11 Subject to the approval of the commission, *if necessary* an electric utility may recover costs under  
 12 this paragraph by any of the following methods:

- 13 1. Allocating the costs equally to all customers on a kilowatt-hour basis.
- 14 2. Establishing alternative price structures, including price structures under  
 15 which customers pay a premium for renewable energy.
- 16 3. Any combination of the methods specified in subds. 1. and 2.

*yes -  
for renewable  
utilities*

....NOTE: I assume that recovery of costs will only be allowed through rate-making. *NOT NECESSARY*  
 Is this correct? Also, the suggested language requires PSC approval of a cost recovery  
 method only "if necessary". If cost recovery takes place in rate-making, won't PSC  
 approval always be necessary? In addition, the suggested language refers to "green  
 pricing programs". I didn't use this term because I don't think that its meaning is clear.  
 Finally, note that the above language refers to "electric utilities", rather than "electric  
 providers", because the PSC has no jurisdiction over cost recovery by electric  
 cooperatives. Is this okay, or do you intend to subject cooperatives to PSC jurisdiction? *OK*  
*NO*

17 (3) RENEWABLE RESOURCE CREDITS. (a) An electric provider that provides total  
 18 renewable energy to its retail electric customers in excess of the percentages  
 19 specified in sub. (2) (a) 1. to 6. may, in the applicable year, sell to any other electric  
 20 provider a renewable resource credit or a portion of a renewable resource credit at

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1 any negotiated price. Alternatively, an electric provider may use a renewable  
2 resource credit or portion of a renewable resource credit in a subsequent year to  
3 establish compliance with sub. (2) (a). The commission shall promulgate rules that  
4 establish requirements for calculating the amount of a renewable resource credit.

5 (b) The commission may promulgate rules that establish requirements and  
6 procedures for a sale under par. (a).

7 (4) RULES. The commission may promulgate rules that designate a resource,  
8 except for a conventional resource, as a renewable resource in addition to the  
9 resources specified in sub. (1) (g) 1. and 1m.

10 (5) PENALTY. Any person who violates sub. (2) or any wholesale supplier who  
11 provides an electric provider with a false or misleading certification regarding the  
12 sources or amounts of energy supplied to the electric provider shall forfeit not less  
13 than \$5,000 nor more than \$500,000. Forfeitures under this subsection shall be  
14 enforced by action on behalf of the state by the attorney general. A court imposing  
15 a forfeiture under this subsection shall consider all of the following in determining  
16 the amount of the forfeiture:

17 (a) The appropriateness of the forfeiture to the person's or wholesale supplier's  
18 volume of business.

19 (b) The gravity of the violation.

20 (c) Whether a violation of sub. (2) is due to circumstances beyond the violator's  
21 control.

....NOTE: I am reluctant to use the term "force majeure" because it does not appear  
in the statutes. Does the above language otherwise satisfy your intent? *yes*

22 **SECTION 9. Nonstatutory provisions.**



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SECTION 9

1 (1) INITIAL APPOINTMENTS TO COUNCIL ON UTILITY PUBLIC BENEFITS.

2 Notwithstanding section 15.107 (17) (intro.) of the statutes, as created by this act,  
3 the initial members of the council on utility public benefits shall be appointed for the  
4 following terms:

5 (a) One of the members under section 15.107 (17) (a), (b) and (d) of the statutes,  
6 as created by this act, for terms expiring on July 1, 2001.

7 (b) One of the members under section 15.107 (17) (a) of the statutes, as created  
8 by this act, and the members under section 15.107 (17) (c), (e) and (f) of the statutes,  
9 as created by this act, for terms expiring on July 1, 2002.

10 (c) One of the members under section 15.107 (17) (b) and (d) of the statutes, as  
11 created by this act, and the members under section 15.107 (17) (g) and (h) of the  
12 statutes, as created by this act, for terms expiring on July 1, 2003.

\*\*\*\*NOTE: Under 15.09(1)(a), stats., the default rule is that council memberships  
expire on July 1. Is this okay, or do you have a reason for the May 1 expiration dates in  
the instructions?

13 (2) PUBLIC SERVICE COMMISSION RULES.

14 (a) Using the procedure under section 227.24 of the statutes, the public service  
15 commission shall promulgate the rules required under section 196.378 (3) (a) of the  
16 statutes, as created by this act, for the period before the effective date of the  
17 permanent rules promulgated under that section, but not to exceed the period  
18 authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding  
19 section 227.24 (1) and (3) of the statutes, the commission is not required to make a  
20 finding of emergency.

21 (b) The public service commission shall submit in proposed form the rules  
22 required under section 196.378 (3) (a) of the statutes, as created by this act, to the

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**SECTION 9**

1 legislative council staff under section 227.15 (1) of the statutes no later than the first  
2 day of the 6th month beginning after the effective date of this paragraph.

3 (3) DEPARTMENT OF ADMINISTRATION RULES.

4 (a) Using the procedure under section 227.24 of the statutes, the department  
5 of administration shall promulgate the rules required under section 16.957 (2) (c)  
6 and (4) (b) of the statutes, as created by this act, for the period before the effective  
7 date of the permanent rules promulgated under that section, but not to exceed the  
8 period authorized under section 227.24 (1) (c) and (2) of the statutes.  
9 Notwithstanding section 227.24 (1) and (3) of the statutes, the department is not  
10 required to make a finding of emergency.

11 (b) The department of administration shall submit in proposed form the rules  
12 required under section 16.957 (2) (c) and (4) (b) of the statutes, as created by this act,  
13 to the legislative council staff under section 227.15 (1) of the statutes no later than  
14 the first day of the 6th month beginning after the effective date of this paragraph.

15 (END)